



# OFFICE OF NEW MEXICO ATTORNEY GENERAL HECTOR BALDERAS

## *SPECIAL INVESTIGATIONS DIVISION USE OF FORCE POLICY AND PROCEDURES*

## **Introduction:**

### Purpose and Scope

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner. It is the practice of the Office of the New Mexico Attorney General to develop, adopt and adhere to this uniform set of policies and procedures related to Commissioned Law Enforcement employees (Agents or Special Agents) use of force within the scope of their duties. This policy has been developed with substantial consideration of the New Mexico Department of Public Safety and its recognition of best practices as outlined in its Force Response to Resistance Training (required during certification as a law enforcement officer in New Mexico).

These guidelines were created to meet the specific needs of this agency, taking into consideration our employee base, material resources, and current procedures. These guidelines may differ from other law enforcement agencies, but will meet generally accepted law enforcement practices. They do not cover every circumstance that one may encounter.

Due to space constraints, brevity is used and explanations are not always given for concepts that are considered basic law enforcement procedure.

The most recent version of this document will always supersede any previous policy and/ or memorandum. This policy will be reviewed and updated when necessary.

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ATTORNEY GENERAL HECTOR H. BALDERAS

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DATE

## **Administration of Use of Force Policy:**

*Upon hire and commission with the office of the Attorney General Special Agents shall be issued and trained in this use of force policy during their new hire firearms training and qualification.*

Fundamental tenants of The Office of the New Mexico Attorney General policies related to use of force include:

- Understanding of the law (federal and state) as it relates to agency policies concerning the use and amount of force that is objectively reasonable to achieve the agency law enforcement mission.
- Constitutional Considerations and historical background  
5<sup>th</sup> and 14<sup>th</sup> Amendments: “No person shall be ... deprived of life, liberty or property without due process of law.”

8<sup>th</sup> Amendment: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted...”

Agents must take into account the “totality of the circumstances” when selecting a reasonable force option.

A subject’s level of resistance to a lawful detention or arrest will determine the type of force used by Agents.

## **Factors to be used to determine the reasonableness of force:**

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit.

These factors include, but are not limited to:

- Immediacy and severity of the threat to officers or others.
- The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of officers available vs. subjects).
- The effects of drugs or alcohol.
- Subject's mental state or capacity.
- Proximity of weapons or dangerous improvised devices.
- The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

- The availability of other options and their possible effectiveness.
- Seriousness of the suspected offense or reason for contact with the individual.
- Training and experience of the officer.
- Potential for injury to officers, suspects and others.
- Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- The risk and reasonably foreseeable consequences of escape.
- The apparent need for immediate control of the subject or a prompt resolution of the situation.
- Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- Prior contacts with the subject or awareness of any propensity for violence.
- Any other exigent circumstances.

*Agents have a range of force options available to them; however, in all cases, the use of force must be reasonable compared to the threat, resistance, and other circumstances known to the officer at the time the force was used.*

### **Pursuit Policy:**

- It is the policy of the New Mexico Office of the Attorney General that at no time will an agent of this office initiate, assist or participate in any vehicle pursuit.
- Police lights issued will be utilized for emergency situations, and law enforcement identification only.

### **Force options:**

- **Show of Force:** (Definition – Demonstrating the ability to use force but not putting it into action. There is no tissue damage and the action can be recalled).
- **Use of Force:** (Definition – Any action that has the potential for tissue damage that cannot be recalled).

### ***Special Agents are required to:***

- (1) Use the type of force which is objectively reasonable under the circumstances
- (2) Use only the amount of force which is objectively reasonable to overcome resistance and gain or maintain control of a subject and/or situation
- (3) Conform to agency policy as well as federal and state law.

### ***Show / Use of Force Options include:***

- Appearance of Agent (physical presence)

- Verbal requests and/or commands
- Officer's strength to take physical control
- Empty-hand control holds / pain compliance techniques to direct movement, immobilize a subject, control the subject and/or situation
- Use of personal body weapons in self-defense and to gain advantage over the subject
- Use of issued tools and weapons (baton, Taser, OC,) to secure compliance and ultimately gain control of a person and/or situation
- Utilizing firearms or other available weapon or action in defense of self or others (see weapons of opportunity below)

### **Weapons of Opportunity:**

It is recognized that circumstances may arise in which Agents reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Agency. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

### **Deadly Force:**

- **Deadly Force:** *(Definition – Any action by the manner in which it is used, is likely to cause serious bodily injury or death)*
- **Serious Bodily Injury:** *(Definition – Bodily injury which involves substantial risk of death, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty)*
- Deadly force is always the last resort used in the direst of circumstances. The authority to use deadly force is a tremendous responsibility given to peace officers by people who expect them to exercise that authority judiciously. Peace officers are expected to be self-disciplined and accountable.
- Homicide is the lawful or unlawful killing of a human being. Under certain circumstances, homicide by a public officer can be justifiable and legal. *Reference Section 30-2-6, NMSA 1978.*

### **Office of the New Mexico Attorney General Agency considerations:**

It is the policy of the Office of the New Mexico Attorney General to use deadly force in only those situations where it is reasonably necessary for self-defense or for the defense of another. Warning shots are prohibited.

***SHOOTING AT OR FROM MOVING VEHICLES.*** Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

***Important Note:*** Officers must always take into account the totality of circumstances when selecting a force option. It is not the intent of this policy to imply that any one circumstance alone may or may not justify the use of deadly force.

***USE OF FORCE TO EFFECT AN ARREST.*** Any Agent may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. An Agent who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested nor shall an Agent be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance.

***AUTHORIZED FIREARMS.*** Only agency issued firearms shall be utilized by Special Agents of the Office of the New Mexico Attorney General. Only firearms which the individual Agent has been qualified (achieving a passing score) by the NMDPS (New Mexico Department of Public Safety) qualification(s) standard applicable at the time shall be carried.

### **Duty to Act:**

An officer may face both criminal and civil liability and disciplinary action if they fail to intervene and prevent other officers from violating anyone's constitutional rights if they had reason to know and opportunity to act. *US v. Koon*, 34F. 3d 1416 -1447 (9<sup>th</sup> Circuit, 1994), *Cunningham v. Gates*, 229F. 3d 1271 at 1289-90 (9<sup>th</sup> Circuit, 2000), *Samuels v. Cunningham*,

2003 US District LEXIS 14479 (Dist. Del), *Jones v. Hartford*, 2003 US District LEXIS 17340 (Dist. CT)

## **Emergency Medical Care:**

In every instance where force is used by an Agent of the Office of the New Mexico Attorney General medical care will be summoned and aid shall be rendered or otherwise provided for the subject whom force has been applied to. Documentation of the medical care provided will be present in reports prepared related to the incident.

## **Report Writing Documentation of use of Force:**

- The United States Supreme Court has determined that the objective reasonableness for the use of force *must be fact specific*.
- In order for the actions of the officer to be properly evaluated, the courts must rely on the documentation of all relevant factors.
- It is imperative that each report be thorough and comprehensive, documenting all aspects of the specific response to resistance based on the officer's recollection.
- Agents shall photograph all relevant items related to a use of force incident. This includes the scene, injuries (suspect and Agent), damage to NMOAG equipment. All documentation including photographs shall be available by the end of the shift (when force occurred) to the supervisory chain of command for review.

## **Notification to Supervisors:**

Supervisory notification shall be made as soon as practical following the application of force in any of the following circumstances:

- The application caused a visible injury.
- The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
- The individual subjected to the force complained of injury or continuing pain.
- The individual indicates intent to pursue litigation.
- Any application of a TASER device or control device.
- Any application of a restraint device other than handcuffs, shackles or belly chains.
- The individual subjected to the force was rendered unconscious.
- An individual was struck or kicked.
- An individual alleges any of the above has occurred.